

Remarks/Arguments

Applicants have received and carefully reviewed the Final Office Action of the Examiner mailed February 26, 2007. Currently, claims 5-31, 52, 54-72, and 74-93 remain pending of which claims 5-31 were previously withdrawn from consideration. Claims 52, 54-72, and 74-93 have been rejected. In this amendment, claim 91 has been amended. Favorable consideration of the following remarks is respectfully requested.

Claim Amendments

As a preliminary matter, claim 91 has been amended to correct a typographical error. The term “fitler” has been amended to correctly recite “filter”.

Claim Rejections – 35 USC § 102

In paragraph 2 of the Final Office Action, claims 52, 54-55, 57-72, 74-75, and 77-93 were rejected under 35 U.S.C. 102(e) as being anticipated by Mazzocchi et al. (U.S. Patent No. 6,605,102). After careful review, Applicant must respectfully traverse this rejection.

Turning to claim 52, which recites:

52. (Previously Presented) A filter assembly for capturing debris within a blood vessel, comprising:
an elongate shaft having a proximal end and a distal end;
a filter disposed proximate the distal end of the elongate shaft, the filter including a filtering region and an attachment region, the filter having an expanded and a contracted shape;
in the expanded shape, the filtering region including a major opening defined adjacent the filtering region proximal end and a single layer of filter membrane defining a filter basket and extending between the major opening and the distal end of the filtering region, the filter membrane having a plurality of apertures defined therein that are configured to allow the passage of blood through the filtering region;
the filter membrane further comprising a first tapered portion and a second tapered portion, a portion of the first tapered portion defining a first included angle, and the second tapered portion extending proximally from a proximal portion of the first tapered portion, a portion of the second tapered portion defining a second included angle greater than the first included angle.

Claim 52 recites, in part, “in the expanded shape, the filtering region including a major

opening defined adjacent the filtering region proximal end and a single layer of filter membrane defining a filter basket and extending between the major opening and the distal end of the filtering region”.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Also, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Accordingly, for anticipation, Mazzocchi et al. must teach each and every element in as complete of detail as is contained in the claims. Nowhere does Mazzocchi et al. appear to disclose, “in the expanded shape, the filtering region including a major opening defined adjacent the filtering region proximal end and a single layer of filter membrane defining a filter basket and extending between the major opening and the distal end of the filtering region”, as recited in claim 52.

Instead, Mazzocchi et al. appears to disclose an intravascular trap and method of trapping particles in bodily fluids. Figures 11A and 11B, cited in the Final Office Action, illustrate a vascular trap suitable for temporarily filtering embolic particles from blood passing through a patient’s vascular system. (See column 19, lines 55-57). However, the trap, or basket, is a two-layered structure. To further illustrate this, Mazzocchi et al. recites:

In moving from its collapsed state (FIG. 11A) to its expanded state (FIG. 11B), the metal fabric turns in on itself, with a proximal portion 282 of the collapsed basket being received within the interior of a distal portion 284 of the collapsed basket. This produces a two-layered structure having a proximal lip 286 spaced radially outwardly of the guidewire, defining a proximally-facing cup-shaped cavity 288 of the basket. (Emphasis added).

(Column 20, line 65 through column 21, line 5). Thus, the trap that is described in Mazzocchi is a two-layered structure in its expanded state and not a single layer, as in claim 52.

In paragraph 6 of the Final Office Action, under the “Response to Arguments” heading, the Final Office Action states, “it is noted that the both independent claims use the transitional phrase ‘comprising’, which renders the claims open-ended. That is, the

phrase does NOT exclude any element, step, or ingredient not specified in the claim. Therefore, the Mazzocchi reference, which discloses a filter layer having two layers of filter membrane, also discloses a filter having a 'single filter layer' and an additional filter layer." While Applicant agrees that the transitional phrase "comprising" is open-ended, Applicant must respectfully disagree with the assertion that Mazzocchi et al. discloses two layers, so it also discloses a single filter layer and an additional filter layer.

Applicant respectfully asserts that the term "single" is defined to mean only one. As such, the claim language "a single layer" limits that claim to only one layer. Accordingly, two layers cannot anticipate a single layer. In fact, two layers cannot be a single layer and an additional layer because the additional layer prevents there from being only one layer, as single is defined. Therefore, the two layers of Mazzocchi et al. clearly cannot anticipate a single layer, as recited in claim 52. Thus, for at least this reason, claim 52 is believed to be not anticipated by Mazzocchi et al. and Applicant respectfully requests withdrawal of the rejection.

Additionally, for similar reasons, as well as others, claims 54-55 and 57-71, which depend from claim 52 and include significant additional limitations, are believed to be not anticipated by Mazzocchi et al. and Applicant respectfully requests withdrawal of the rejection.

Turning to claim 72, which recites:

72. (Previously Presented) A filter assembly for capturing debris within a blood vessel, comprising:

an elongate shaft having a proximal end and a distal end;

a filter disposed proximate the distal end of the elongate shaft, the filter having an expanded and a contracted shape, the filter including a filtering region and an attachment region, the filtering region defining a major opening adjacent a proximal end of the filtering region;

the attachment region comprising at least one strut extending proximally from adjacent the major opening to the elongate shaft;

in the expanded shape, the filtering region including a single layer of filter membrane defining a filter basket and extending between the major opening and the distal end of the filtering region, the filter membrane having a plurality of apertures defined therein that are configured to allow the passage of blood through the filtering region;

the filtering region further comprising a first tapered portion and a second tapered portion, a portion of the first tapered portion defining a first included angle and a portion of the second tapered portion defining a second included angle which is different than the first included angle.

Claim 72 recites, in part, "in the expanded shape, the filtering region including a single layer of filter membrane defining a filter basket and extending between the major opening and the distal end of the filtering region". As discussed previously, nowhere does Mazzocchi et al. appear to disclose such a limitation. Therefore, for at least this reason, claim 72 is believed to be not anticipated by Mazzocchi et al. and Applicant respectfully requests withdrawal of the rejection.

Additionally, for similar reasons, as well as others, claims 74-75 and 77-93, which depend from claim 72 and include significant additional limitations, are believed to be not anticipated by Mazzocchi et al. and Applicant respectfully requests withdrawal of the rejection.

Claim Rejections – 35 USC § 103

In paragraph 4 of the Final Office Action, claims 56 and 76 were rejected under 35 U.S.C. 103(a) as being unpatentable over Mazzocchi et al. in view of Daniel et al. (U.S. Patent No. 5,814,064). For similar reasons given above, as well as others, claims 56 and 76 are believed to be patentable over Mazzocchi et al. and Applicant respectfully requests withdrawal of the rejection.

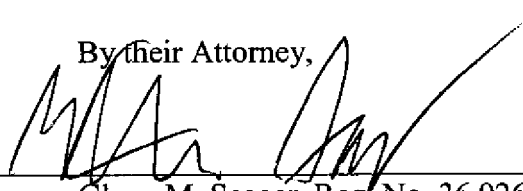
In view of the foregoing, all pending claims are believed to be in a condition for allowance. Reexamination and reconsideration are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

THOMAS E. BROOME ET AL.

By their Attorney,

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Glenn M. Seager, Reg. No. 36,926
CROMPTON, SEAGER & TUFTE, LLC
1221 Nicollet Avenue, Suite 800
Minneapolis, Minnesota 55403-2420
Tel: (612) 677-9050